

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4272 OF 2005

Smt. Bimladevi Achhelal Yadav.

...Petitioner.

Vs.

Municipal Corporation of Greater Mumbai, & Ors. ...Respondents.

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Mr. M. P. Vashi for the Petitioner.

Mr. A. J. Bhor for Respondent No.1.

Mr. C. R. Sonawane, AGP for Respondent Nos.2 to 4.

Mr. V.M. Thorat with Mr. P.N. Patil & Mr. A. Gaikwad for
Respondent No.5.

Mrs.Anita Dwivedi for Respondent No.6.

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CORAM : A.P. SHAH AND

DR.D.Y.CHANDRACHUD, JJ.

July 15, 2005.

P.C.:

The Petitioner contested an election from Ward No.141 (Iraniwadi, Kandivali (West)) to the Brihanmumbai Municipal Corporation on a seat which was reserved for women from the Other Backward Classes. The Petitioner filed two caste certificates – one dated 24th January 1994 issued by the Executive Magistrate, Bombay City, according to which the Petitioner was certified as being a Hindu Yadav and the second, dated 18th

August 2004 issued by the Deputy Collector, Mumbai Suburban District, according to which the Petitioner is a Hindu Ahir. Elections were held on 10th February 2004 and the Fifth Respondent was declared as having been elected. The Sixth Respondent filed an Election Petition challenging the election of the Fifth Respondent on the ground that she had obtained a false caste certificate; that she was born and brought up in U.P. and had migrated to Maharashtra in 1992-93. The caste certificate was sent to the Caste Scrutiny Committee for verification. By an order dated 30th May 2003, the Scrutiny Committee came to the conclusion that the caste certificates submitted by the Fifth Respondent had not been issued by the Competent Authority. Thereupon, the Fifth Respondent was informed by the Municipal Corporation that she was deemed to have vacated her office as a Councillor. In a Writ Petition filed by the Fifth Respondent (W. P. 4229 of 2003) a Division Bench of this Court set aside the order passed by the Scrutiny Committee and remanded the matter for fresh decision in accordance with law. The Scrutiny Committee by its order dated 21st November 2003 held that the caste certificate

issued to the Fifth Respondent was not valid and upon the aforesaid decision, the Municipal Corporation informed the Fifth Respondent on 29th November 2003 that she was deemed to have vacated her office. The Writ Petition filed by the Fifth Respondent (W.P. 9231 of 2003) has been admitted by a Division Bench of this Court on 5th July 2004, but no interim relief has been granted. On 1st November 2004, the Election Petition filed by the Sixth Respondent came to be allowed. The election of the First Respondent was set aside. The Petitioner was declared to have been elected as a Municipal Corporator from the said Ward. The Fifth Respondent has filed a Writ Petition before this Court in which, by an order dated 1st December 2004, a Learned Single Judge of this Court directed that the Petitioner would be entitled to act as a Councillor, but she will not draw any allowances or exercise the right to vote.

2. The dispute in the present case arises out of the verification of the caste certificate that was submitted by the Petitioner and on the basis of which she was allowed to contest a

seat in question which stood reserved for women belonging to the Other Backward Classes. The Scrutiny Committee by its order dated 6th June 2005 invalidated the claim of the Petitioner. The Scrutiny Committee noted that two caste certificates were issued to the Petitioner, one dated 24th June 1994 showing the Petitioner as a Hindu Yadav and the other dated 18th August 2004 as Hindu Ahir. The first caste certificate has been found to be fabricated. The Scrutiny Committee has noted that the Petitioner was born on 12th February 1978 at Bhilai and her father is Mohansingh Yadav. She studied until 1995 at Bhilai upto the Xth Standard and the name of her father in all her School records was shown as Mohansingh Yadav. She was married in 1991 to Achhelal Yadav and after the Gauna ceremony, she came to Mumbai in 1996 to reside with her husband. The Petitioner set up the plea that in 1979 she was adopted by one Ramdhari Yadav. Two deeds of adoption, one dated 26th June 1986 and another dated 26th August 2004 were noted from the record. The Scrutiny Committee held that the marriage had taken place at Bhilai in 1991 and it was in 1996, that the Petitioner migrated to Mumbai. She was hence not

a resident of Maharashtra prior to 5th October 1979 which is the relevant date for the designation of the Yadav community or for that matter before 25th May 1990 which was the relevant date in respect of the designation of the Ahir community. The Scrutiny Committee noted that the Petitioner submitted a caste certificate of the Yadav Community while filing her nomination form for election. Subsequently, in view of the fact that the said certificate was false and fabricated, she filed a complaint through her husband's elder brother that her documents had been misplaced or lost. Another caste certificate as Ahir was obtained on 12th October 2004. The School records of the Petitioner record the name of the caste as 'Yadav' and the name of the natural father. On a review of the entire material, it has been found that the case of the Petitioner is false and fabricated and the caste claim has been invalidated.

3. An affidavit in reply has been filed to these proceedings by the Fifth Respondent in which the documents and the material which was produced by the Petitioner has been adverted to. As already noted earlier, two different caste certificates were relied

upon by the Petitioner, the first dated 24th January 1994 recording that the Petitioner was a Hindu belonging to the Yadav community while the second dated 18th August 2004 was to the effect that the Petitioner is a Hindu and belongs to the Ahir community. In her application dated 5th August 2004, the Petitioner mentioned her father's name as Ramdhari Ghuran Yadav, resident of Ram Mandir Road, Dayaram Yadav Chawl, Goregaon (West), Mumbai-400 104. In the column as to whether any application was made previously for the issuance of a caste certificate, the Petitioner falsely replied in the negative. In an affidavit dated 28th February 2005 (Exh.7 to the reply), the Petitioner claims that she was adopted by Ramdhari Ghuran Yadav on 10th February 1979. The natural father is Mohansingh Yadav and it has been stated that the Petitioner studied in Bhilai until she came to Mumbai in 1996. The Scrutiny Committee has noted that though the alleged adoption is of 1979, two deeds of adoption, one dated 26th June 1986 and another of 26th August 2004 were produced. The School Leaving Certificate dated 5th July 1995, however, clearly shows the name of the Petitioner's father as Mohansingh Yadav and her caste as

'Yadav'. In the application for the issuance of a marriage certificate, the name of the Petitioner's father has been shown as Mohansingh Yadav, a resident of Bhilai. The Scrutiny Committee, as already noted earlier, had taken due cognizance of the fact that a complaint was lodged on behalf of the Petitioner stating that certain certificates had been lost. All this was done, according to the Committee, only to set up a palpably false case.

4. From the aforesaid narration, and having perused the material, it is obvious that the Petitioner has come with contradictory positions. It is evident that an unlawful attempt has been made on behalf of the Petitioner to seek the benefit of a reservation for the O. B. Cs. The order of the Scrutiny Committee is a reasoned order based on a due application of mind to the material on record. Having perused the material, we do not find any reason to exercise our jurisdiction under Article 226 of the Constitution. The petition is dismissed.

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